

JOINT COMMITTEE ON ADMINISTRATIVE RULES

ILLINOIS GENERAL ASSEMBLY

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SEN. TONY MUÑOZ
SEN. IRA SILVERSTEIN
SEN. CHUCK WEAVER
REP. PETER BREEN
REP. TOM DEMMER
REP. GREG HARRIS
REP. LOU LANG
REP. ANDRÉ THAPEDI

MINUTES

March 14, 2017

MEETING CALLED TO ORDER

The Joint Committee on Administrative Rules met on Tuesday, March 14, 2017 at 10:30 a.m. in Room C-1 of the Stratton Office Building, Springfield IL. Co-Chair Harmon called the meeting to order and announced that the policy of the Committee is to allow only representatives of State agencies to testify orally on any rule under consideration at Committee meetings. Other persons are encouraged to submit their comments to the JCAR office in writing.

ATTENDANCE ROLL CALL

X Senator Bill Brady	X Representative Peter Breen
X Senator Don Harmon	X Representative Tom Demmer
X Senator Karen McConnaughay	X Representative Greg Harris
X Senator Tony Muñoz	X Representative Lou Lang
X Senator Ira Silverstein	X Representative André Thapedi
X Senator Chuck Weaver	X Representative Keith Wheeler

APPROVAL OF THE MINUTES OF THE FEBRUARY 15, 2017 MEETING

Senator Silverstein moved, seconded by Representative Demmer, that the minutes of the February 15, 2017 meeting be approved. The motion passed unanimously (12-0-0).

REVIEW OF AGENCY RULEMAKINGS

Department of Human Services – Service Planning and Provision (89 Ill. Adm. Code 684; 40 Ill. Reg. 11093) and Provider Requirements, Type Services, and Rates of Payment (89 Ill. Adm. Code 686; 40 Ill. Reg. 11101)

Corey-Anne Gulkewicz, General Counsel, and Fred Flather, Chief of Staff, represented DHS. Mr. Flather confirmed that the DHS Director was not present.

Rep. Lang said his concerns were not so much with what was in the rules as with what was left out of them: specifically, the lack of standards governing agency decisionmaking that creates the possibility of policy outside of rule. Mr. Flather said that he was aware of these concerns, but disagreed with them. Rep. Lang asked if DHS is aware that, under the IAPA, rules must be specific and any policy that is maintained outside rule is illegal under the law. Ms Gulkewicz conceded that policy needs to be in rule under the IAPA, and noted that all applicable policy is in the rules.

Rep. Harris: The lack of specificity in how overtime is to be granted or denied to persons with disabilities could be a recipe for a tragedy. It is a mistake to relegate life and death decisions for a particularly vulnerable population to an anonymous bureaucrat at the end of an 800 number who might not know the case history of the persons concerned. He criticized the lack of publicly available standards and transparent criteria by which decisions will be made under this rule.

Rep. Thapedi: Reminded the DHS representatives that, at the last meeting, he had offered assistance in facilitating a resolution on this rulemaking between DHS and SEIU. Mr. Flather: confirmed the offer had been made. He declined to meet with Rep. Thapedi because he believed it would be inappropriate to bring a GA member into contract negotiations with SEIU. Rep. Thapedi: My assistance was offered in conjunction with the rules, not union negotiations. Mr. Flather: DHS believed it would be a violation of the Department's rulemaking procedures to meet with a stakeholder during an ongoing rulemaking. These procedures require public comment be received in written form.

Rep. Thapedi: Why, as a member of JCAR who would be voting on the rules, would it be inappropriate for the Department to discuss these rules with me? Mr. Flather: This would be allowable, but the offer to meet was declined because DHS believed that Rep. Thapedi would only meet on the condition that SEIU be included in the meeting.

Rep. Thapedi: Why is DHS adopting this rule, purportedly a cost-saving measure, when it is planning to spend millions on capital improvements at some of its facilities? Mr. Flather: These capital improvements are being made as part of a court settlement. The money has already been set aside for this particular purpose. Cost savings are not the driving motivation behind this rulemaking. Rather, its purpose is to spread the hours so customers have more reliable backup options and their primary providers would not be working long hours without a break.

Mr. Flather: Under this rule, 100% of customers will continue to receive the services they need. 89% of providers already work less than the 45 hour limit in an average week. For this 89%, the rule would have virtually no impact. No customer will lose a single hour from his or her service plan as a result of this rule.

Rep. Thapedi: What is the impact on persons who have developed a relationship of trust with one particular provider and depend on that single provider? Mr. Flather: These customers can keep those providers, up to the 45 hour limit. The overtime cap would help these customers build relationships with backup providers who could step in if their front-line provider is no longer available.

Co-Chair Harmon: Why, if DHS is sensitive to having its ongoing union negotiations with SEIU interfered with through *ex parte* communication, is it appropriate to adopt this rulemaking, despite the material effect that it would have on those negotiations. Mr. Flather: The rulemaking applies mainly to customers, not providers, and is only tangentially connected to negotiations? DHS is promulgating this rulemaking, in part, at SEIU's request. Co-Chair Harmon: SEIU's request was largely because DHS had originally attempted to implement the overtime policy without going through the rulemaking process. He urged DHS to maintain the same sensitivity on all sides of an issue and not behave one way when it's convenient and one way when it's not.

Representative Lang: Although he dislikes this rule, he has never voted against a rule just because he didn't like it. His job at JCAR is not to make that decision, but to determine whether the rules comply with the law. He did not hesitate to oppose rules promulgated by agencies under previous administrations when

they were wrong and urged his GOP colleagues to do the same thing here: to ensure that State agencies follow the law.

Representative Lang moved, seconded by Representative Thapedi, that JCAR object to and prohibit the filing of these rulemakings because DHS has refused to specify the standards by which it will exercise its discretionary authority to grant exceptions to the overtime limits based on unique or complex medical needs; has refused to specify how customers can document these needs when applying for an exception; and has refused to specify a timeframe within which DHS will inform the customer whether an exception has been approved. Failure to include in rule standards for the exercise of discretionary authority violates Sec. 5-20 of the Illinois Administrative Procedure Act. JCAR finds this implementation of policy not in rule to be contrary to the public interest and welfare. In addition, JCAR objects to DHS' prior implementation of Home Services Program overtime limits and sanctions against Individual Providers who exceeded those limits before it began the rulemaking process for these policies. DHS enforced these policies outside of rule for 3 months prior to the First Notice publication of this rulemaking.

PROHIBITION ROLL CALL

N	Senator Bill Brady	N	Representative Peter Breen
Y	Senator Don Harmon	N	Representative Tom Demmer
N	Senator Karen McConaughay	Y	Representative Greg Harris
Y	Senator Tony Muñoz	Y	Representative Lou Lang
Y	Senator Ira Silverstein	Y	Representative André Thapedi
N	Senator Chuck Weaver	N	Representative Keith Wheeler

The motion failed on a 6-6 vote.

Representative Thapedi moved, seconded by Representative Lang, that JCAR object to the rulemaking on the same basis as the previous motion for prohibition.

OBJECTION ROLL CALL

N	Senator Bill Brady	N	Representative Peter Breen
Y	Senator Don Harmon	N	Representative Tom Demmer
N	Senator Karen McConaughay	Y	Representative Greg Harris
Y	Senator Tony Muñoz	Y	Representative Lou Lang
Y	Senator Ira Silverstein	Y	Representative André Thapedi
N	Senator Chuck Weaver	N	Representative Keith Wheeler

The motion failed on a 6-6 vote.

Co-Chair Harmon, observing that the Committee had split along partisan lines twice in a row, reiterated Rep. Lang's concerns. JCAR exists for one function and one function only: to act as a legislative check on rules that executive branch agencies promulgate on the basis of legislative authority delegated to them by the General Assembly. The reason that the committee is evenly split between parties and chambers is because of its unique role, which should transcend partisan and cameral divides.

State Employees' Retirement System – Public Information, Rulemaking and Organization (2 Ill. Adm. Code 2375; 40 Ill. Reg. 15337)

Senator Weaver moved, seconded by Senator McConnaughay, that JCAR recommend that SERS be more timely in updating its rules to reflect statutory changes. PA 96-6, which this rulemaking implements, became effective more than 6 years before SERS proposed this rulemaking. The motion passed unanimously (12-0-0).

EXPEDITED CORRECTION

Illinois Labor Relations Board – General Procedures (80 Ill. Adm. Code 1200; 41 Ill. Reg. 738)

Senator Silverstein moved, seconded by Representative Demmer, that JCAR certify this expedited correction. The motion passed unanimously (12-0-0).

AGENCY RESPONSE

Illinois Student Assistance Commission – Illinois Prepaid Tuition Program (23 Ill. Adm. Code 2775; 40 Ill. Reg. 12942)

No further action will be taken. Staff will monitor.

CONSIDERATION OF OTHER RULEMAKINGS

Illinois Gaming Board – Video Gaming (General) (11 Ill. Adm. Code 1800; 40 Ill. Reg. 16454)

Caleb Melamed represented the Illinois Gaming Board and consented to JCAR's request for an Extension. Representative Lang moved, seconded by Representative Harris, that the Second Notice Period on this rulemaking be extended for an additional 45 days. The motion passed unanimously (12-0-0).

Department of Natural Resources – Forest Management Plan (17 Ill. Adm. Code 1537; 40 Ill. Reg. 16680)

Representative Lang moved, seconded by Senator Weaver, that JCAR recommend that the agency clarify in this Part which elements of the program are mandatory requirements that the agency will enforce on participants and which are merely unenforced recommendations for good forestry management. The motion passed unanimously (12-0-0).

CERTIFICATION OF NO OBJECTION

Senator Muñoz moved, seconded by Representative Demmer, that the Committee inform the agencies to whose rulemakings the Committee has not voted an Objection or Extension, or did not remove from the No Objection List, that the Committee considered their respective rulemakings at the monthly meeting and, based upon the agreements for modification of the rulemakings made by the agencies, no Objections will be issued. The motion passed unanimously (12-0-0), with one exception:

Department of Healthcare and Family Services – Practice in Administrative Hearings (89 Ill. Adm. Code 104; 40 Ill. Reg. 9900)

The roll call was 11-0-0, with Representative Lang abstaining.

ANNOUNCEMENT OF APRIL MEETING DATE

Co-Chair Harmon announced that the next JCAR meeting would be held at 10:30 a.m. on Tuesday, April 4, 2017, in Room C-1 of the Stratton Office Building, Springfield IL.

ADJOURNMENT

Representative Harris moved, seconded by Senator Weaver, that the meeting stand adjourned. The motion passed unanimously.

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